

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

THOMAS MICHAEL PIERCE,
Petitioner.

No. 2 CA-CR 2015-0204-PR
Filed December 28, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County
Nos. CR020582 and CR020748
The Honorable D. Douglas Metcalf, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

STATE v. PIERCE
Decision of the Court

Thomas Michael Pierce, Florence
In Propria Persona

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Presiding Judge Vásquez and Chief Judge Eckerstrom concurred.

M I L L E R, Judge:

¶1 Thomas Pierce, formerly known as Lawrence Taylor, petitions this court for review of the trial court’s order summarily dismissing his successive and untimely petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Pierce has not met his burden of demonstrating such abuse here.

¶2 We have previously set forth the procedural history of Pierce’s case in our 2007 memorandum decision denying relief on one of his previous petitions for review. *State v. Pierce*, No. 2 CA-CR 2006-0134-PR, ¶¶ 1-3 (memorandum decision filed Jan. 12, 2007). Since that decision, Pierce has unsuccessfully sought post-conviction relief at least two additional times, most recently in January 2015.

¶3 In his latest petition for post-conviction relief, Pierce raised twenty-seven claims, including claims of newly discovered evidence, ineffective assistance of counsel, and challenges to “subject matter jurisdiction.” The trial court summarily dismissed the petition. It concluded the bulk of Pierce’s claims could not be raised in the successive and untimely proceeding, including his claims that the court lacked subject matter jurisdiction and that he had not identified any newly discovered evidence warranting relief. This petition for review followed.

STATE v. PIERCE
Decision of the Court

¶4 On review, Pierce raises numerous arguments, specifically that: (1) the trial court lacked subject matter jurisdiction over him, (2) the indictments were “fatally flawed,” (3) his consecutive sentences were improper, (4) several of his convictions violated double jeopardy, (5) he was actually innocent of some convictions, (6) he was denied his right to counsel of choice, (7) that the state failed to disclose exculpatory evidence as required by *Brady v. Maryland*, 373 U.S. 83, 87 (1963), and, (8) various claims of ineffective assistance of counsel. Of the claims identified by Pierce on review, only his claim of actual innocence potentially can be raised in an untimely proceeding like this one. *See* Ariz. R. Crim. P. 32.1, 32.4(a). But Pierce did not raise this claim in his petition below, and we therefore do not address it. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (declining to address issues not presented to trial court); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii). As to Pierce’s remaining arguments, we adopt the trial court’s thorough and correct ruling rejecting those claims. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶5 Although we grant review, we deny relief.